

**SUPERIOR COURT OF CALIFORNIA,
COUNTY OF VENTURA
VENTURA DIVISION**

TENTATIVE RULINGS

EVENT DATE: 10/15/2020 EVENT TIME: 09:30:00 AM DEPT.: 20
JUDICIAL OFFICER: Matthew P. Guasco

CASE NUM: 56-2018-00515296-CU-AT-VTA
CASE TITLE: AAMH PHARMACEUTICAL INC VS. OPTUMRX INC

CASE CATEGORY: Civil - Unlimited CASE TYPE: Antitrust/Trade Regulation

EVENT TYPE: Motion to Vacate - an Arbitration Ruling & Enforce a Court Order, or in the Alternative, to Stay Further
CAUSAL DOCUMENT/DATE FILED: Motion to Vacate, 07/21/2020

Notice Regarding Courtroom 20 Law & Motion Procedures: The law and motion calendar in Courtroom 20 before Judge Matthew P. Guasco starts promptly at 8:30 a.m. Ex parte applications will be heard at the same time as matters on the law and motion calendar. Parties appearing by Court Call must check in with the Judicial Assistant by 8:20 a.m. No notice of intent to appear is required. Parties wishing to submit on the tentative decision must so notify the Court by e-mail at Courtroom20@ventura.courts.ca.gov or by fax to Judge Guasco's secretary, Lori Jacques at (805) 477-5892. **Do not call in lieu of sending an e-mail or fax.** If a party submits on the tentative decision without appearing, but another party appears, the hearing will be conducted in the absence of the non-appearing party. Effective February 13, 2018, all cases assigned to Courtroom 20 are assigned for all purposes (including trial) to Judge Guasco.

COVID-19 NOTICE: Pursuant to the administrative orders of the Presiding Judge and the Civil Reopening Plan, effective June 10, 2020, and until further notice, all attorneys and self-represented parties in law and motion hearings must appear telephonically via Court Call; there shall be no personal appearances in the courtroom without the prior express approval of Judge Guasco. You may contact Court Call as follows: www.courtcall.com or call 888-882-6878.

Special Notice regarding start time on October 15, 2020: Due to a calendar conflict which cannot be changed, the Law & Motion calendar on October 15, 2020, will start at 9:30 a.m.

The following is the Court's tentative decision concerning the motion of defendant, OptumRx, Inc. ("Optum"), for order vacating arbitration award or, in the alternative, to stay action of plaintiffs, Thomas Shilton Corporation and Oxnard Drug ("Shilton plaintiffs"), pending completion of the binding arbitration previously ordered by this Court on April 22, 2019:

The Court **DENIES** Optum's motion to vacate the arbitrator's award, issued on April 29, 2020, the effect of which is to exempt the Shilton plaintiffs from the arbitration proceeding previously ordered by the Court. The arbitrators concluded that the Shilton plaintiffs were not parties to a binding arbitration agreement. Optum argues that this award exceeded the arbitrators' authority and improperly overturned this Court's prior order compelling the matter to arbitration. Not so.

The Court's April 22, 2019 minute order expressly held that the Federal Arbitration Act (9 U.S.C., §§ 2, et seq.) ("FAA") governs these consolidated arbitration proceedings. Additionally, the Court ruled as follows:

"Here, however, Pharmacy Plaintiffs cannot carry their burden of demonstrating grounds to deny enforcement of the legally binding arbitration agreements because the question of arbitrability – including whether and to what extent the arbitration agreements are substantively and procedurally unconscionable – has been expressly delegated to the arbitral forum. Additionally, each of the agreements incorporates the AAA Commercial Arbitration Rules, which state that "The arbitrator shall have the power to rule on his or her own jurisdiction, including any objections with respect to the existence, scope, or validity of the arbitration agreement or to the arbitrability of any claim or counterclaim." (Rule R-7). The delegation of arbitrability to the arbitral forum here is clear, unequivocal and unmistakable; it must be enforced. (*Henry Schein, Inc. v. Archer and White Sales, Inc.* (2019) ___ U.S. ___, 139 S.Ct. 524, 531, 202 L.Ed.2d 480.)" (April 22, 2019, minute order, p. 6, § 8.)

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While this Court had the task of determining whether a binding arbitration contract exists in the first instance for purposes of compelling arbitration, the Court passed on to the arbitral forum all matters within the broad scope of its authority as defined by the agreement of the parties. Here, that scope included preservation and re-litigation of the issue of whether the Shilton plaintiffs were bound by an arbitration agreement ("existence, scope, or validity of the arbitration agreement"). Having pressed so hard to compel arbitration, Optum can hardly be heard to complain about the arbitrators' decision to exempt the Shilton plaintiffs from that process; that decision was properly vested in the arbitrators by the very arbitration agreements Optum has successfully enforced in this Court. (*Chesapeake Appalachia, LLC v. Scout Petroleum, LLC* (3rd Cir., 2016) 809 F.3d 746, 763-64, and authorities cited therein; *Oracle Am., Inc. v. Myriad Group A.G.* (9th Cir. 2013) 724 F.3d 1069, 1074-75, and authorities cited therein.)

The Court finds, therefore, that Optum has failed to meet its burden of proving that the arbitrators "exceeded their powers" within the meaning of Code of Civil Procedure section 1286.2, subdivision (a)(4). Indeed, Optum has failed to demonstrate any other grounds under section 1286.2 to vacate the arbitrators' decision. Accordingly, the Court DENIES Optum's motion to vacate the arbitrators' award/decision exempting the Shilton plaintiffs from the binding arbitration which is pending in the JAMS forum.

The Court GRANTS Optum's request to stay the Complaint as to the Shilton plaintiffs pursuant to Code of Civil Procedure section 1281.4. The causes of action alleged by the Shilton plaintiffs against Optum and the other defendants (and the events, occurrences and transactions upon which they are based) are substantially the same or similar to those being litigated between the remaining plaintiffs and defendants in the arbitral forum. The commonality is so striking that the Court finds it would undermine the interests of justice and judicial economy to permit the Shilton plaintiffs and Optum to litigate this action in this Court while the remaining parties litigate the same issues and claims in the arbitral forum. That is a recipe for inconsistent outcomes and unnecessary expense to both the Shilton plaintiffs and Optum.

The Court hereby enters its ORDER that the Complaint of the Shilton plaintiffs is hereby STAYED pending further order of this Court and the completion of the arbitration proceedings previously compelled by order of this Court. The Court calendars the matter for a status hearing regarding the stay on April 21, 2020, at 8:30 a.m. in Courtroom 20. The parties shall serve and file a Joint Status Conference Statement summarizing the status of the pending arbitration proceedings and other matters pertinent to the stay at least ten (10) days before the hearing.

Counsel for Optum shall serve and file a notice of ruling and proposed order consistent with the above and in conformity with the Code of Civil Procedure and the California Rules of Court. A copy of this tentative decision (if adopted by the Court as its final ruling) may be attached to any such proposed order in lieu of copying the same verbatim in the body of the document.